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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,957	12/20/2000	Phil Delurgio	DEM1P004	7258
36088	7590	08/31/2006	EXAMINER COLBERT, ELLA	
KANG LIM 3494 CAMINO TASSAJARA ROAD #436 DANVILLE, CA 94306			ART UNIT 3693	PAPER NUMBER

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/741,957

Applicant(s)

DELURGIO ET AL.

Examiner

Ella Colbert

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-14 are pending. Claims 1-3 were previously amended, claims 5 and 6 were previously added, and claims 7-14 have been added in this communication filed 4/28/06 and the Supplemental Response filed 5/26/06.

2. The Specification objection has been overcome in part because of the amendment to the Specification and is hereby withdrawn in part. A portion of the Specification still remains objected to as set forth here below.

Specification

3. The Specification is still objected to because the "Attorney Docket Number DEM1P002)" should be deleted and application no. 09/741,956 should be entered for the application filed December 20, 2000 entitled "Econometric Engine", by Hau Lee, Suzanne Valentine, ..."; 09/741,958 filed December 20, 2000 entitled "Price Optimization System", by Michael Neal, ..." and 09/741,959 filed December 20, 2000, entitled "Econometric Optimization Engine", by Krishna Venkatraman, ...". Correction is required. See MPEP § 608.01(b).

Terminology Used Inconsistent With Accepted Meaning

4. Where Applicants' act as their own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the Applicants' intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999).

The term “[imputed]” in claims 1, 3, 5, and 6 is confusing because the accepted meaning is “to lay the responsibility or blame for often falsely or unjustly, and to credit a person or a cause”. Merriam-Webster’s Collegiate Dictionary –10 ED. The term is indefinite because the specification does not clearly redefine the term.

The term “[posterior]” inference in claims 1 and 3 is confusing because the accepted meaning is “coming after, situated behind”. Merriam-Webster’s Collegiate Dictionary –10 ED. The term is indefinite because the specification does not clearly redefine the term.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites “receiving sales data” and “receiving cost data”. It is vague and unclear how the “sales data” and the “cost data” are received and what is used to generate the “imputed variables”. Are the “imputed variables” generated by a machine or a user and is the “sales data” and the “cost data” received from a machine or a user?

Claim 3 recites “ecometric engine”. It is unclear and vague what the “ecometric engine” is from the Specification and the drawings. “Barron’s Dictionary of Computer

and Internet Terms” on page 127 defines the term “engine” as “the part of a computer program that implements a special technique”.

The dependent claims 2 and 4-14 are also rejected because of their dependency on a rejected base claim.

Conclusion: Suggestion: Incorporate some of the formulas on pages 67, 69, and 70-73 into the independent claims. Applicants’ are respectfully requested to please provide documentation as to whether the formulas are the Applicants’ formulas and a copy of the document(s) where the formulas are found.

Inquiries

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

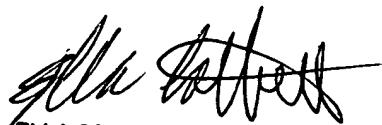
If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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August 7, 2006



ELLA COLBERT
PRIMARY EXAMINER